

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
SEATTLE STEVEDORE COMPANY)
AND MORFLOT FREIGHTLINERS,)
INC. AND UNITED GRAIN CORP.,)

Appellants,)

v.)

PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)

Respondent.)

PCHB Nos. 78-46, 78-47, 78-50
78-64, 78-79 and 78-113

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the consolidated appeals from the issuance of seven \$250 civil penalties for the alleged violations of Sections 9.03(b) and 9.15(a) of respondent's Regulation I, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (presiding) at a formal hearing in Tacoma, Washington on October 4, 1978.

Appellant United Grain Corporation (UGC) was represented by Fred Davis; appellants Seattle Stevedore Company (SSC) and Morflot

1 Freightliners, Inc. (Morflot) were represented by their attorney,
2 Jeff Carey; respondent was represented by its attorney, Keith D.
3 McGoffin. The Port of Tacoma (cited in all civil penalties) did not
4 appeal; Continental Grain Company (cited in one civil penalty,
5 No. 3686) did not appeal. UGC appealed only as to civil penalties
6 Nos. 3684, 3685 and 3687. SSC and Morflot appealed all civil penalties.

7 Respondent moved to dismiss the appeal on the ground that UGC did not
8 file its appeal with respondent within 30 days after its receipt.
9 Such filing is not jurisdictional. RCW 43.21B.120 and .230. The
10 motion is therefore denied.

11 Having heard the testimony, having examined the exhibits, and
12 having considered the contentions of the parties, the Board makes
13 these

14 FINDINGS OF FACT

15 I

16 Pursuant to RCW 43.21B.260, respondent has filed with the
17 Board a certified copy of its Regulation I and amendments thereto,
18 which we notice.

19 Section 9.03 makes it unlawful to cause or allow the emission of
20 any air contaminant, here grain dust, for more than three minutes
21 in any one hour which is equal to or greater than 20% opacity.

22 Section 9.15(a) makes it unlawful to cause or permit matter to
23 be handled, transported or stored without taking reasonable precautions
24 to prevent particulate matter, here grain dust, from becoming airborne.

25 Section 3.29 provides for a civil penalty up to \$250 per day
26 for each violation of Regulation I.

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II

On January 25, 1978 at about 1:20 p.m., respondent's inspector visited UGC's grain loading facility located at Pier 1, Port of Tacoma in Tacoma, Washington. He observed tan colored dust from two holds of a ship, M/S OSTROGOZHOV. He recorded an opacity of 35% for a period of seven consecutive minutes from the first hold. Thereafter, he recorded an opacity of 40% for ten consecutive minutes from the second hold. The inspector boarded the ship and contacted a foreman of appellant SSC. He observed that no hold was covered; a trimmer, a device used to fill voids in the hold which cannot be reached in a direct pour, was being used to fill the ship; and the vacuum attachments to one trimmer were not being used. Suction hoses, which lead to a baghouse, were not connected because the flexible hose was not serviceable. There was no cover over the holds because the trimmer needed to be moved during loading operation.

For the foregoing occurrences, appellants were issued four notices of violation, two for alleged violations of the opacity standard of Section 9.03, and two for alleged violations of Section 9.15. For the foregoing violations, appellants were issued two \$250 penalties, for the violation of Section 9.03 and Section 9.15 for each of the two holds. (Civil penalties Nos. 3684 and 3685).

III

On January 27, 1978 at about 2:20 p.m., respondent's inspector observed dust emitting from an uncovered hold of a ship (M/S IVAN KOTLYAREVSKIY) docked at the Port of Tacoma, Pier 1. Thereafter, respondent's inspector boarded the ship and found a trimmer in use, operated by SSC, but with no aspirator hose connected to the trimmer.

1 Although he found suction hoses in the holds, such hoses were not
2 effective. Appellants were issued a notice of violation of Section 9.15,
3 from which followed a \$250 civil penalty (No. 3687).

4 IV

5 On February 27, 1978 at about 8:30 a.m., respondent's inspector
6 visited Pier 1 at the Port of Tacoma and observed dust becoming
7 airborne from the hold nearest the stern of a ship (M/S KAPITAN KIRIV).
8 At that time, no hatch cover was used during the loading of the ship.
9 Although evacuation hoses were being brought to the hold, they could
10 not reach the hold because of the low tide. For the foregoing events,
11 appellants were issued a notice of violation for the alleged violation
12 of Section 9.15 from which followed a \$250 civil penalty (No. 3722).

13 V

14 On February 28, 1978 at about 2:11 p.m., respondent's inspector
15 visited Pier 1 at the Port of Tacoma and saw tan colored dust emissions
16 from the Number One hold of a ship (M/S KAPITAN KIRIV). He recorded
17 an 80 to 100% opacity for twelve consecutive minutes. Thereafter
18 he boarded the ship and found no cover over the hold. One evacuation
19 hose was in use. Even with the use of an extension, the grain loading
20 spout did not reach the hold of the ship. For the foregoing occurrences,
21 appellants were issued two notices of violation, one for allegedly
22 violating Section 9.03 and another for Section 9.15. A \$250 civil
23 penalty based on the two notices of violations was thereafter issued
24 (No. 3732).

25 VI

26 On April 10, 1978 at about 2:20 p.m., respondent's inspector

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visited Pier 1 at the Port of Tacoma and observed dust emissions from an uncovered hold of a ship (M/S ALEKSANDR SEROFIMOVICH). After boarding the ship, he found two evacuation hoses in the hold; two hoses were added during his inspection. The trimmer being used at the time did not have a suction hose attached to it. For the foregoing occurrence, appellants were issued a notice of violation for the alleged violation of Section 9.15 from which followed a \$250 civil penalty (No. 3799).

VII

Since 1973, the Port of Tacoma has added dust collection devices to its facilities. Equipment available for air pollution control at the grain loading site includes a baghouse ducted to each of seven loading spouts. On each trimmer is a place to connect an aspirator. Equipment is connected and operated by SSC employees. Plastic covers are available for SSC to place over the holds. On signal from SSC's employees, UGC controls the flow of grain to each spout. Breathing equipment is available to workers in a hold.

Respondent considers that adequate air pollution control devices are available at the facility. However, the aspirators are not always effective on 'Tween deckers, which are the type of ships involved in these appeals. Some of the hoses are torn and flattened, and consequently do not work well. Thus, covering the hold becomes more important in the prevention of airborne dust. When "topping off" a hold, it is difficult to cover the hatch. Similarly, it is more difficult to cover the hatch while trimming than during ordinary loading operations because it is necessary to move the spout in the hold.

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VIII

On January 26, 1978 at about 1:20 p.m., respondent's inspector observed gray dust emissions from the hold of a ship (M/V OREKHOV) at Continental Grain Company's (CGC) loading facility in Tacoma. He recorded a 60% opacity for ten consecutive minutes. At the time, corn, being loaded with a trimmer, was cast against a bulkhead and deflected, with dust particles, upward. The CGC's facility, which differs from the Port of Tacoma facility, ordinarily works well to control air pollution except in the case of trimming a 'Tween decker. A hatch cover was available but was not used by the workers. For the foregoing occurrence, appellants were issued two notices of violation for the alleged violation of Section 9.03 and 9.15. From this followed a \$250 civil penalty (No. 3686).

IX

Literature studies indicate that the explosibility of grain dust during loading of ships is not high.

X

Appellant Morflot is the agent for a steamship organization. It does not participate during loading at the pier facilities.

SSC contracts with Morflot to load the ships at the pier facilities. SSC neither owns nor maintains any equipment, but uses that equipment which is provided to them by the Port of Tacoma, or CGC (at the CGC facility). SSC is concerned about possible dust explosion and the health hazard to its men when a hatch is covered.

XI

Any Conclusion of Law which should be deemed a Finding of

1 Fact is hereby adopted as such.

2 From these Findings come the following

3 CONCLUSIONS OF LAW

4 I

5 Morflot did not cause or permit any violation on the days and
6 tires alleged. As to it, the penalties should be vacated.

7 II

8 SSC, as the operator of the equipment, caused or permitted the
9 violations on each of the days and times alleged. Accordingly, the
10 penalties should be affirmed.

11 III

12 UGC controlled the flow of grain at the Port of Tacora pier
13 on the signal of the SSC. UGC was not shown to have caused or
14 allowed violations on the days and times alleged at such facility.
15 Accordingly, the penalties appealed by UGC should be vacated.

16 IV

17 Any Finding of Fact which should be deemed a Conclusion of
18 Law is hereby adopted as such.

19 From these Conclusions the Board enters this

20 ORDER

21 1. The civil penalties as to Morflot Freightlines, Inc. are
22 vacated.

23 2. Each penalty assessed upon Seattle Stevedore Company is
24 affirmed.

25 3. Each appealed penalty assessed upon the United Grain Company
26 is vacated.

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1 DATED this 27th day of December, 1978.

2 POLLUTION CONTROL HEARINGS BOARD

3 Dave J. Mooney
4 DAVE J. MOONEY, Chairman

5 Chris Smith
6 CHRIS SMITH, Member

7 David Akana
8 DAVID AKANA, Member

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